BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	GN Docket No. 07-45
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

Covad Communications Company ("Covad") hereby submits comments in the above-captioned proceeding. In its Notice of Inquiry, the Commission, among other things, seeks comment on "market, investment, and technological trends" in order to "analyze and assess whether infrastructure capable of supporting advanced services is being made available to all Americans."[1] In its *NOI*, the Commission recognizes its statutory obligation under Section 706 of the Telecommunications Act of 1996 to "encourage the deployment of advanced telecommunications capability to all Americans."[2]

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[1] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, GN Docket No. 07-45, FCC 07-21 (rel. Apr. 16, 2007) at 1 ("*NOI*").

[2] *See* § 706(b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act), reproduced in the notes under 47 U.S.C. § 157. As the Commission observes in the *NOI*, "advanced telecommunications capability" is defined "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications

Major aspects of the *NOI* include the Commission's requests for input regarding:

- what actions can be taken to accelerate advanced services deployment;
- the economic considerations that support the deployment of advanced telecommunications capability;
- the competitiveness of the broadband market and whether there is evidence of anticompetitive conduct; [3]
- technological improvements in advanced services technology;[4]
- investment trends and the extent to which they may reflect the availability of high-speed and advanced services;[5] and
- the effect recent market changes on broadband deployment.[6]

I. The Provision of Advanced Services Using Legacy Copper Facilities Is a Promising Reality.

Covad, along with the rest of the competitive industry, has developed services which use legacy copper infrastructure for advanced services. Such services developed by the competitive industry are providing residential and business consumers (particularly small business consumers) speeds, capabilities, and options that did not exist in the market a few years ago. The potential for even further development of the capabilities of copper facilities is very real. Withholding competitive access to last-mile copper loops, either via copper retirements or via unprecedented regulatory forbearance from last-mile incumbent local exchange

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capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." (citing § 706(c)). *See NOI* n. 2.

[3] *See NOI* at 4.

[4] *Id.* at 5, 7-8.

[5] *Id.* at 6.

[6] *Id.* at 7.

carrier ("ILEC") unbundling obligations, impedes such innovations. Anything which limits the competitive industry's access to copper infrastructure represents a step backwards in terms of ubiquitous availability of advanced services options.

In December 2006, Covad completed the build-out of the nation's largest ADSL2+ network. Such "next-generation" network facilities, which are provided using last-mile bottleneck copper loops, are capable of providing customers broadband connections with data speeds of up to 25 Mbps.[7] Covad's deployment of ADSL2+ technology renders it and its partners capable of providing high-speed data and next-generation voice services to over 14 million homes and businesses in 12 major markets.[8] Using this network, Covad has already partnered with EarthLink to provide EarthLink's "DSL & Home Phone Service" bundles to consumers in Atlanta, Chicago, Dallas, Los Angeles, New York, Miami, Philadelphia, San Diego, San Francisco, San Jose, Seattle, and Washington, DC. EarthLink's DSL & Home Phone Service utilizes Covad's Line Powered Voice Access product, which is a true "UNE-L" service consistent with the very core intent of the Telecommunications Act of 1996. This popular service offering provides customers with broadband speeds from 1.5 Mbps to up to 8 Mbps along with at least 500 minutes of line-powered local and long distance voice telephony including voicemail, caller ID, and many other advanced features for between $49.95 and $69.95 per

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[7] *See Covad Completes Build-Out of Nation's Largest Next-Generation Telecommunications Network Ahead of* Schedule (Dec. 27. 2006) *available at* http://covad.com/companyinfo/pressroom/pr_2006/12_27_06.pdf.

[8] The markets currently covered by our ADSL2+ network are Atlanta, Chicago, Dallas, Los Angeles, New York, Miami, Philadelphia, San Diego, San Francisco, San Jose, Seattle, and Washington, DC.

month.[9] Additional advanced services that are possible using ADSL2+ technology plus legacy copper infrastructure include Ethernet services, broadcast and on-demand video services, G.SHDSL and other xDSL broadband services,[10] and more. Covad looks forward to providing such services to its customers and its partners in the future.

Such innovative services are also being offered by competitive peers of Covad. For example, Ethernet over copper is currently being offered by companies such as XO Communications, LLC, Nuvox Communications, Telekenex, Expedient, and Allied.[11] Ethernet over copper is capable of supporting services with transmission speeds of 200 Mbps symmetric transmission at 500 meters and 50 Mbps at 1.5 km

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[9] For more information about EarthLink's DSL & Home Phone service, please see http://www.earthlink.net/voice/bundles/dslhomephone/plans/.

[10] G.SHDSL enables symmetrical 2.3 Mbps service up to approx. 36,000 feet. Other xDSL services can offer broadband speeds of up to 100 Mbps.

[11] *See Petition of XO Communications, LLC Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers,* Reply Comments of XO Communications, LLC, Covad Communications Group, Inc., Nuvox Communications, and Eschelon Telecom, Inc., RM-11358 (consolidated) (filed Apr. 2, 2007) at 8-9 ("*XO/Covad/Nuvox/Eschelon Copper Retirement Reply Comments*"); *Petition of XO Communications, LLC Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Reply Comments of Bridgecom, et al., RM-11358 (consolidated) (filed Apr. 2, 2007) at 17 ("*Bridgecom et al. Copper Reply Comments*"). *See also* http://www.telekenex.com/products-services.asp--page=ethernet.html (discussing Telekenex's Ethernet over copper service); http://www.expedient.com/solutions/ethernetanywhere.htm (discussing Expedient's Ethernet over copper service).

or more.[12] Competitive service bundles using Ethernet over copper technology are enabling increasing numbers of residential, small business, and enterprise customers to enjoy tailored, comprehensive communications solutions at very competitive prices. There is every reason to believe that such services will proliferate if not artificially stifled by denying competitive carrier access to legacy copper networks.

Technological advancements also have enabled the provision of television services, including digital and high definition services, using legacy copper infrastructure. For instance, Cavalier Telephone ("Cavalier") is currently using ADSL2+ to provide numerous simultaneous streams of high-definition video to customers in Richmond, Virginia. Cavalier can simultaneously deliver 150 channels of digital video, broadband DSL at speeds of up to 10 Mbps, and traditional phone service over existing phone lines.[13] SureWest is also offering its residential consumers a triple play bundle including digital television over copper for $79 per month.[14] Video over copper has the very real potential to become a

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[12] *See Petition of XO Communications, LLC Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Reply Comments of Time Warner Telecommunications and One Communications RM-11358 (consolidated) (filed Apr. 2, 2007) at 17-19 (noting that enterprise carriers are beginning to use Ethernet over copper to provide 50 Mbps speeds at 12,000 feet).

[13] For more information on Cavalier's video over copper services, please see http://www.cavtel.com/broadbandtv/index.shtml.

[14] *See* http://www.surewest.com/.

formidable competitive alternative to the hybrid fiber-coax ("HFC") plant of the cable providers and the FTTH/FTTC/fiber-to-the-node plant of the ILECs.[15]

Covad's innovative services, along with other advanced services over copper being offered by similar service providers across the country, demonstrate the end result benefits of customer choice inherent in making good use of what exists. The alternative to maintaining access to the copper network for competitive carriers is essentially mandating a mass migration of consumers from copper to ILEC fiber or cable. Competitive broadband product offerings have capitalized on technological developments, and their broadband product offerings continue to evolve based on the remarkable - and by no means exhausted - elasticity of the legacy copper infrastructure. Thanks to the determination and ingenuity of such innovative offerings, the future for new and continually improving advanced services over legacy copper facilities is very bright.

The investment community confirms that competitive advanced services over copper have a bright future. Competitors have attracted significant investment in their advanced services equipment, networks, and products all premised on the use of legacy last-mile copper. Indeed, recently the investment community has pipelined *billions* of dollars into the competitive communications industry. The level of interest and investment in intramodal competitive advanced services providers by Wall Street (and, in effect, the business plans of such service providers

[15] *See* Letter from Patrick Donovan, Esq., Bingham McCutchen, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74 (Dec. 11, 2006).

and the competitive alternatives available to consumers) directly correlates to certainty surrounding ongoing access to last-mile copper.[16] As discussed in more detail below, regulatory items currently pending before the Commission have the potential to significantly undercut the competitive advanced services alternatives currently available in the United States.

II. Copper Retirement Threatens the Deployment and Use of Innovative and Competitive Copper-Based Advanced Services that Would Compete with Fiber- and Cable-Based Advanced Services.

Many companies recently requested that the Commission initiate a rulemaking on the issue of the copper retirement practices of ILECs and potentially amending the current Part 51

copper retirement rules.[17] A recurring theme of these arguments is that the Commission's copper retirement rules should evolve as the uses of copper for advanced services have evolved significantly in the recent past. Among other things, those in support of updating the Commission's copper retirement policies ask for the application of basic public interest analysis to situations where ILECs seek to destroy or withhold legacy copper facilities from competitors and their

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[16] *See, e.g., Petition of XO Communications, LLC Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Reply Comments of Telecom Investors, RM-11358 (filed Apr. 2, 2007) (discussing the negative impacts the Commission's current copper retirement policies will have on investment in intramodal competitive alternatives).

[17] *See Petitions for Rulemaking to and Clarification Regarding the Commission's Rules Applicable to Copper Loops and Copper Subloops*, Public Notice, 22 FCC Rcd 1056 (2007). Covad wishes to incorporate by reference into the record of this proceeding the information contained in the petitions for rulemaking and any amendments thereto contained in the RM-11358 docket.

customers under the guise of retirement. If acted upon in a timely manner, the benefits to advanced services deployment will likely be significant.

More specifically, a fair regulatory environment governing the usage of legacy copper infrastructure by innovative competitors would foster an increased competitive landscape that would provide consumers additional choices and would likely reduce costs, increase demand for advanced services, foster technological innovation, and ensure broader availability of innovative services to areas and customers that traditionally have been left behind. This is particularly true for rural and small business customers. The potential for innovative advanced services via copper could be absolutely vital to rural areas that have wireline telecommunications service but lack other competitive choices and that are not likely to be offered cable or fiber services in the foreseeable future. The potential for cutting-edge advanced services offerings over copper is also likely to be of primary interest for small business customers, given their history of neglect from ILECs in terms of tailored and affordable service offerings and the fact that cable facilities generally do not yet extend to most business locations.

The likely detriments caused by copper retirement on both the provision of advanced services by small businesses and the availability of advanced services to small businesses recently spurred the Small Business Administration ("SBA") to contact the Commission in support of a new rulemaking.[18] The SBA expressed

[18] *See* Letter from Thomas M. Sullivan, Chief Counsel for Advocacy and Cheryl M. Johns, Assistant Chief Counsel for Telecommunications, Office of Advocacy, U.S. Small Business Administration to Chairman Kevin J. Martin, Federal Communications Commission (May 10, 2007) n. 5 ("*SBA Letter*").

concern that the Commission's current copper retirement policies, in conjunction with the Commission's policies related to access to fiber, will harm small business providers of advanced services and force them out of the market. Moreover, the SBA suggested that the Commission's copper retirement policies, if left unchanged, might stifle innovation and the development of new advanced services. This would have the effect of reducing service choices and increasing prices.[19] The SBA also expressed concern that a reduction in the competitive alternatives offered to small businesses in the United States might harm a significant segment of U.S. commerce. These potential impacts are antithetical to Section 706 and the President's broadband goals.

At the very time advanced services over copper are beginning to flourish, ILECs are increasingly providing copper retirement notifications,[20] and there is every reason to believe that copper retirements negatively impacting the customers of competitive carriers will proliferate as fiber facilities are deployed by ILECs. Initiating the requested rulemaking on copper retirement is a clear way for the Commission to take action in furtherance of its requirement to ensure advanced services deployment in a timely and reasonable manner.

III. Forbearance Threatens the Deployment and Use of Innovative and Competitive Copper-Based Advanced Services that Would Compete with Fiber- and Cable-Based Advanced Services.

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[19] *See id.* at 2-3.

[20] *See* Kelly M. Teal, *Out of the Loop: As Bell Copper Retirement Notices Stack Up, CLECs Ask FCC for Formal Review*, Phone+ Magazine (Apr. 30, 2007) (discussing the proliferation of copper retirement notices) *available at http://www.phoneplusmag.com articles/ 07mayfeat03.html.*

As Commissioner Adelstein noted in his separate statement to the *NOI*, "[c]onsumers won't be well-served if [the Commission lets] the U.S. broadband market stagnate into duopoly, so I hope that our assessment of the state of competition for broadband services will be analytically-sound and rigorous."[21] As is the case with the potential negative impacts of copper retirement, sweeping regulatory forbearance from last-mile copper unbundling requirements outside of the mechanism established in the *Triennial Review Remand Order* threatens the ongoing potential for multiple advances services choices and would likely have the effect of quickly ushering in an ILEC/cable market duopoly situation. An advanced services wireline duopoly will ultimately harm consumers, innovation, and the deployment of advanced services to all in a reasonable and timely manner.

The local unbundling and deregulation forbearance petitions for the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach markets filed by Verizon,[22] and the similar petitions filed by Qwest for the Denver, Minneapolis, Phoenix, and Seattle markets,[23] if granted, would very likely have the effect of significantly curbing innovation and essentially eliminating the vital competitive effects intramodal competition have had on advanced services availability and

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[21] *See NOI*, Statement of Commissioner Jonathan S. Adelstein, at 19.

[22] Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area; the New York Metropolitan Statistical Area; the Philadelphia Metropolitan Statistical Area; the Pittsburgh Metropolitan Statistical Area; the Providence Metropolitan Statistical Area; and the Virginia Beach Metropolitan Statistical Area, WC Docket No. 06-172 (filed Sept. 6, 2006).

[23] The Qwest petitions have not yet been put on Public Notice by the Commission or made available on the Commission's web site.

pricing. The petitions base their requests for broad regulatory forbearance overwhelmingly on allegations regarding local competition from cable incumbents. The very real negative impacts of such deregulation on competitors and their customers are not fully addressed, and the long-term results of such deregulation and the resultant duopolies that would be countenanced by such deregulation are overlooked. The Commission would serve both the public interest and meet its Section 706 mandate by refusing to grant such sweeping deregulation.

IV. Conclusion

The preservation of competitive access to copper facilities and the ongoing innovative use of those facilities by competitors as a means to offer advanced services to consumers falls squarely within the Commission's Section 706 mandate. In meeting this mandate, the Commission should not overlook or discount the importance of Congress's instruction to swiftly utilize active regulatory means of encouraging advanced services deployment, such as the imposition of meaningful price cap regulation, regulations that effectively promote local competition, and removal of barriers to infrastructure investment (not limited to incumbents).[24] The Commission should also be mindful of the direction contained in the President's technology agenda regarding the need for consumers and businesses to be able to choose from "plenty of" competitive alternatives.[25] As such, Covad respectfully

[24] *See* 47 U.S.C. § 157 nt (Section 706(a)); *see also NOI* at 11.

[25] *See* Promoting Innovation and Competitiveness: President Bush's Technology Agenda (Mar. 26, 2004)("The President has called for universal, affordable access for broadband technology by the year 2007 and wants to make sure we give Americans plenty of

requests that the Commission: (1) refuse requests for last-mile unbundling forbearance requests, and (2) take immediate action to examine its current copper retirement policies to help ensure that advanced services are deployed to all Americans in a reasonable and timely fashion.

Respectfully submitted,

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technology choices when it comes to purchasing broadband.") *available at* http://www.whitehouse.gov/infocus/technology/.